



Case Study

Realising the right to legal identity

A case study as part of an evaluation of the Australia
Indonesia Partnership for Justice

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Abbreviations and acronyms

AIPJ	Australia Indonesia Partnership for Justice	NGO	non-governmental organisation
Bappenas	Ministry of National Development Planning (Badan Perencanaan Pembangunan Nasional)	NTB	West Nusa Tenggara province (Nusa Tenggara Barat)
CAPII	Civil Registry (Catatan Sipil)	NTT	East Nusa Tenggara province (Nusa Tenggara Timur)
CRVS	Civil Registration and Vital Statistics	ODI	Overseas Development Institute
CSO	civil society organisation	PEKKA	The Empowerment of Female Heads of Household NGO (Pemberdayaan Perempuan Kepala Keluarga)
GTZ	German Agency for Technical Cooperation (Deutsche Gesellschaft für Internationale Zusammenarbeit)	PERMA	Supreme Court Regulation (Peraturan Mahkamah Agung)
IALDF	Indonesia Australia Legal Development Facility	PUSKAPA	Center on Child Protection (Pusat Kajian Perlindungan Anak)
KPAI	Indonesian Child Protection Commission (Komisi Perlindungan Anak Indonesia)	SEMA	Supreme Court Circular Letter (Surat Edaran Mahkamah Agung)
KUA	Office of Religious Affairs district and sub-district level (Kantor Urusan Agama)	SOP	standard operating procedure
LPA	Lembaga Perlindungan Anak	UNICEF	United Nations Children's Fund
MoHA	Ministry of Home Affairs	YASALTI	Yayasan Wali Ati
MoRA	Ministry of Religious Affairs	YSSP	Yayasan Sanggar Suara Perempuan Soe

Introduction

This case study examines efforts of civil society organisations (CSOs) and the Australia Indonesia Partnership for Justice (AIPJ) to expand access for Indonesian citizens to legal identity documents, particularly during the AIPJ project period (2011-2015). It covers efforts to change policy and to implement policies, including, most recently, mobile and integrated services which began in 2014. This case study contributes to the ‘Evaluation of CSOs Contributions to Justice Sector Reform’, commissioned by AIPJ and undertaken by the Overseas Development Institute (ODI) in 2015 and 2016.¹

This case study offers insights into the involvement of CSOs, and AIPJ as both a supporter of CSOs and an agent in its own right, across multiple phases of the policy process and between national and subnational levels. That is, how CSOs and AIPJ have contributed to national policy change; how they have contributed to the implementation of these changes at subnational level; and how these experiences have in turn led to further refinement of policies at national and subnational levels to respond to challenges faced during implementation.

The problem: lack of legal identity documents limits access to civil rights and services

In Indonesia, legal identity documents, including birth, marriage and divorce certificates, are required to enrol in school, receive benefits from government social protection programmes, register to vote, establish head of household status, claim the right to assets and inheritance, and to be eligible for certain jobs. Registration of birth, marriage, divorce, and death are also important for the state to produce accurate vital statistics that are used to plan and allocate budgets for various government social and economic programmes. These statistics influence the accuracy of voting data for political elections (I45; I60).²

Despite the importance of legal identity documents, millions of eligible Indonesians – particularly those in low income and rural households – do not have them. In the poorest 30% of Indonesian households, 55% of couples do not have a marriage certificate and 75% of their children do not have a birth certificate (Sumner and Kusumaningrum, 2014). Nine out of ten female heads of household living below the poverty line reported being unable to bring their divorce case to court (Sumner, 2010).

As well as poverty status, children living in rural areas with a parent with an apparent physical difficulty or a parent without a birth certificate, and non-first wives in a polygamous marriage, are less likely to have legal identity documents. It should be noted that there are no significant differences between gender in the number of boys and girls without a birth certificate (Sumner and Kusumaningrum, 2014). The 2014 AIPJ *Indonesia’s Missing Millions* report found that documentation requirements to receive services and access state benefits are often not enforced in practice, but found examples of exclusion. The research identified associations between legal identity documents and age of marriage, school completion and recent access to health services. However, the relationship between these factors is unclear; it may be that another factor is contributing to both the lack of documentation and younger age of marriage.

The process of obtaining legal identity documents

Three institutions, operating at both national and subnational levels, are responsible for providing legal identity documents. The Ministry of Home Affairs (MoHA) Office of Population and Civil Registration (Catatan Sipil – CAPIL) provides birth certificates for all children and marriage certificates for non-Muslim citizens. The Office of Religious Affairs (KUA) at the Ministry of Religious Affairs (MoRA) provides marriage, divorce, reconciliation and *talaq* certificates for Muslim citizens. Under the Supreme Court, the Religious Court provides divorce certificates for Muslim citizens, and General Courts

1 The evaluation sought to answer two overarching questions: to what extent and in what ways has AIPJ expanded the reach and strengthened the quality of the work of its CSO partners; and to what extent and in what ways have CSOs influenced changes in the justice system? The main evaluation report includes more detailed evaluation questions, methods, overall analysis and conclusions from the three case studies (court reform, legal aid, legal identity), and acknowledges the many people who contributed to the evaluation process.

2 Key informant interview number 45. This is the notation used to refer to interviews throughout this paper.

provide marriage and divorce certificates for non-Muslim citizens.

Administratively, CAPIL is under the coordination of the MoHA. Since 2013, the budget for legal identity services has been centralised in the national budget, with MoHA as the implementing agency. MoHA then allocates and disburses the budget to each provincial CAPIL (I55). In practice, however, CAPIL as a unit at the local government level must also adhere to the policies of the district head (*bupati or walikota*).

Legal identity documents are linked. To obtain a birth certificate, for example, parents must go to CAPIL or KUA for the marriage certificate, and to CAPIL for the birth certificate. Marriage certificates require birth certificates or birth letters, and divorce certificates require the original marriage book or marriage certificate and child/ren's birth certificate. Since 2013, it is no longer necessary for the courts to legalise marriage.² However, in practice, the courts' role is still perceived as important in legalising the status of children born to unmarried parents (I55). Without a legal marriage certificate, by law, the father's name cannot be on the child's birth certificate, a practice not followed in other Muslim countries (I3).

to obtain them, and the complexity of the process (Sumner and Kusumaningrum, 2014). Dinsdale (2012) characterised these problems as a result of imperfect service delivery by organisations in the legal system, imperfect empowerment, access and organisation by marginalised groups, and imperfect horizontal coordination among government agencies.

Key informants also noted that citizens may not be aware of the value of legal identity documents and therefore may not make efforts to obtain them (I40; I45; I63). Some Muslim citizens think they no longer need to have a marriage certificate because their marriage has been legalised religiously (I63). Advocates with NGO Empowerment of Female Heads of Household (PEKKA) likened community members' experiences with the complicated, multi-agency process as being kicked around like a ball, passed from one institution to another (I10). Informants also mentioned the role of case brokers, whose involvement increased the costs for their clients and who may 'swindle' people by overcharging (I10; I11; I63), as well as petty corruption in the management of legal identity services by public officials and civil servants (I40; I63). These additional factors create further barriers to accessing legal identity documentation.

Barriers to obtaining legal identity documents

The 2014 AIPJ legal identity baseline report identified four primary barriers to obtaining legal identity documents: cost (of documents, court cases, transport), distance, lack of information on the importance of documents and how

1. Background

1.1 The foundations of legal identity rights (1999-2006)

Until about a decade ago, Indonesia did not have national legislation that regulated matters related to legal identity. Civil registration activities followed the rules passed by the Dutch colonial government, which differentiated registration procedures for different groups of people according to their race and religion. These regulations distinguished registration processes for the Indonesian community (*pribumi*),³ European community,⁴ Chinese community⁵ and Christian community.⁶ This distinction left the opportunity for discriminatory practices against citizens.

In 1999, a year after Soeharto's fall from 32 years of power, the new government and the House of Representatives (Dewan Perwakilan Rakyat) passed Law No. 39 of 1999 on Human Rights,⁷ considered by many to be a progressive, landmark piece of legislation in Indonesia. The law guarantees the rights of every citizen of Indonesia in various spheres of life. It served as a basis for civil society movements that sought to defend civil rights and as the cornerstone for many subsequent bills.

The more open atmosphere in the country following the period of reformation after the fall of the Soeharto government in 1998 ('Reformasi') opened the door for increased CSO involvement. CSOs began to interact with a number of state agencies that have the authority and the mandate to improve human rights and access to justice, including in this case legal identity (I56). These institutions included the National Human Rights Commission, the Supreme Court, the Ministry of Women's Empowerment and Child Protection, the Indonesian Child Protection

Commission (Komisi Perlindungan Anak Indonesia – KPAI), the Ministry of Law and Human Rights, the Ministry of Social Affairs, the MoRA, and the MoHA (I55; I56). By 2005, the Religious Courts were working extensively with CSOs, and PEKKA had begun training paralegals to support access to justice (I23; I42).

In the early 2000s, many of these institutions,⁸ a number of civil society organisations and activists, and several international development agencies, including the United Nations Children's Emergency Fund (UNICEF), Plan International and Deutsche Gesellschaft für Internationale Zusammenarbeit (GTZ), established the Consortium on Civil Registration (Konsorsium Catatan Sipil) (I55; I56). The consortium began to draft a civil registration bill and presented the draft to the MoHA in 2005. This bill had a clear goal to end discriminative acts and provide a national law on civil registration (I56).

Separately, MoHA had been developing its own bill, with a focus on administrative and registry dimensions of legal identity. It was oriented around regulating civil registration from an administrative point of view rather than judicial point of view as in the consortium's draft bill. Later, the Ministry of Law and Human Rights combined the two drafts by incorporating the civil registration draft as part of the administration population bill. Some members of the consortium disagreed with this move because they perceived the issue of civil registration as being different from population administration. For them, civil registration was a matter of legal status or identity for a human being, linked to human rights, while population administration was a public law matter to stipulate government registry. They advocated for the bills

3 Civil Registry Regulation for the Indonesian Community (Peraturan Pencatatan Sipil untuk Golongan Indonesia / Reglement op het Holden van de Registers van den Burgerlijken Stand voor Eenigle Groepen v.d nit tot de Onderhoringer van een zefbestuur, behoorende Ind. Bevolking van Java en Madura, Staatsblad 1920:751 jo. Staatsblad 1927:564).

4 Civil Registry Regulation for the European Community (Peraturan Pencatatan Sipil untuk Golongan Eropa / Reglement op het Holden der Registers van den Burgerlijken Stand voor Europeanen, Staatsblad 1849:25 revised in Staatsblad 1946:136).

5 Civil Registry Regulation for the Chinese Community (Peraturan Pencatatan Sipil untuk Golongan Cina / Bepalingen voor Geheel Indonesie Betreffende het Burgerlijken Handelsrecht van de Chinezean, Staatsblad 1917:129 jo. Staatsblad 1939:288 revised in Staatsblad 1946:136).

6 Civil Registry Regulation for the Christian Community (Peraturan Pencatatan Sipil untuk Golongan Kristen Indonesia / Huwelijksordonantie voor Christenen Indonesiers Java, Minahasa en Ambolena, Staatsblad 1933:74 jo. Staatsblad 1936:607 revised in Staatsblad 1939:288).

7 In addition to guaranteeing human rights, this Act authorised the establishment of a National Commission on Human Rights (Komisi Nasional Hak Asasi Manusia). Indonesia previously had a commission on human rights established by Presidential Decree No. 50 of 1993. Thus, the endorsement by Law 39/1999 strengthened the status of the Commission to be equal to a state institution.

8 The National Commission on Human Rights, Indonesia Child Protection Commission (Komisi Perlindungan Anak Indonesia – KPAI), Ministry of Women's Empowerment and Child Protection, Ministry of Justice and Human Rights, Ministry of Social, and the National Population and Family Planning Agency (Badan Kependudukan dan Keluarga Berencana Nasional – BKKBN).

to be separated (I55; I56; I60). However, the integrated draft was kept and, in 2006, Law No. 23 on Population Administration was issued. The emphasis of the regulation on administrative dimensions rather than rights was widely considered a setback for human rights and legal identity movement (I56; I64).

Law 23/2006 revoked the Dutch regulations on civil registration and provided a national reference for population administration and civil registration. It defined population administration as: 'Activities of arrangement and enforcement in the issuance of documents and population data through population registry, civil registration, information management of population administration, and utilisation of the results for public services and the development of other sectors.' (Law 23/2006 Art. 1)

As stated in the bill, population administration aims to: (1) fulfil the fundamental right of every individual in population administration with professional public service, without discrimination; (2) increase public awareness of the obligation to participate in the implementation of population administration; (3) provide national statistical data on population events; (4) support national, regional and local policy formulation and development planning; and (5) support the development of the population administration system (Law 23/2006: Clarification Section).

The bill designated the minister (*menteri*) responsible for government domestic affairs, today the MoHA, as the implementing agency. Article 5 states that the minister is responsible for: (1) coordinating inter-agencies in population administration; (2) determining the system, guidance and implementation standard of population administration; (3) socialising population administration; (4) providing guidance, supervision and consultation in the implementation of population administration affairs; (5) managing and presenting national scale population data; and (6) publishing, issuing and distributing population document forms (Law 23/2006: Art. 5). Thus the MoHA holds the central role.

The bill also established the role of the courts in legal identity matters by requiring parents who fail to register their child's birth within one year of the date of birth to obtain a statement from a General Court before CAPIL can issue a birth certificate (Law 23/2006: Art. 32 [2]). The MoRA, through its Office of Religious Affairs at the sub-district level, was made responsible for the registration of marriage, divorce, reconciliation and *talaq* (divorce in Islamic law with the husband's enunciation to formally repudiate his wife) for Muslim citizens (Law 23/2006: Art. 8 [2]; Art. 9 [2]; and Art. 34 [4] and [5]).

Law 23/2006 stipulates, however, that the registration of a child's birth is the responsibility of individuals, rather than the state (I45) (Law 23/2006: arts 3 and 4; Art. 27

[1]; Art. 29 [1] and [4]; Art. 30 [1] and [6]; Art. 32 [1] and [2]). Those who fail to report births would be subject to certain penalties (Law 23/2006: Art. 90 [1] and [2]). In that sense, the legislation does not encourage the active role of the state to ensure every citizen can obtain their right to legal identity. The bill does express that implementing institutions or other parties can help those who are not able to report a birth by themselves (Law 23/2006: Art. 26 [1]) but this provision is clearly conditional, in as much as it is not the state that takes an active role.

Prior to Law 23/2006, targeted legal identity work was conducted at a local level. A circuit or mobile service for civil registry was first introduced in Aceh in 2005 following the tsunami. GTZ worked in the six districts that were most affected, where many people lost their identity documents, and later expanded its work to 40 districts around the country. Since 2006, the idea has been adopted by MoHA (I55).

1.2 Documenting need, development of National Strategy documents (2007-2010)

Following the issuance of Law 23/2006, a number of initiatives and events occurred that contributed to efforts to expand access to legal identity. A number of donor agencies⁹ were involved in supporting further planning and implementation. GTZ, for example, helped MoHA create a standard operating procedure (SOP) for population administration, develop the circuit service model, and improve functions of public service facilities. The Indonesia Australia Legal Development Facility (IALDF) worked with PEKKA on several surveys to document the need for, and barriers to access to, justice. The 2007-2009 Access and Equity Study found that more than 60% of female-headed households did not have a marriage certificate and faced barriers in accessing the courts due to cost, corruption, distance and literacy. To the Supreme Court, the Ministry of National Development Planning (Bappenas) and the Ministry of Finance, this study offered documented evidence about the lack of access to the courts, particularly among low-income and female-headed households (Sumner and Lindsey, 2011: 8).

On 12 December 2008, the MoHA launched the National Strategy on Universal Birth Registration, which aimed to make sure every child under five years of age had a birth certificate by 2011, an ambitious target that, at the time of publication, has not yet been achieved. That same year, the Religious Court (Badan Peradilan Agama or 'Badilag'), with support from the government, increased its budget to 23 billion Indonesian Rupiah (US\$1.7 million), to finance court fee waiver cases and increase the frequency of circuit courts in remote areas. The budget allocated per fee waiver case is 300,000 Rp. (US\$22.5) (I63). Over two

9 The main body of the evaluation report will include an overview of other actors involved in this work and a more comprehensive overview of Australia's previous programmes in the Indonesian justice sector.

years, the Religious Court budget for such initiatives was increased 18-fold.

In 2009, then-President Yudhoyono held a meeting in Bali with the heads of state agencies, including the Supreme Court, in which they agreed to expand access to public services, including legal identity services, to the poor. This was perceived to be a key moment in laying the groundwork for fee waivers and mobile services (I63). The Supreme Court subsequently issued Circular Letter (SEMA)¹⁰ 10/2010 on Provision of Legal Aid which further provides the basis for access to justice activities within the court (Badan Peradilan Agama, 2013: 24). In the National Medium Term Development Plan 2010-2014, the Supreme

Court and the government set a target number of poor people who should have access to justice services through fee waiver, circuit courts, legal aid posts (*posbakum*) at the courthouse, and grants assistance to obtain legal counsel (Badan Peradilan Agama, 2013: 24).

In 2010, Bappenas published the National Strategy on Access to Justice, developed with support from civil society organisations. The following year, the MoHA developed a roadmap on population administration 2010-2035 and began development of a roadmap for civil registration, a draft of which was initially planned to be completed in 2013 but, at the time of publication, had not yet been released.

¹⁰ Supreme Court Circular Letters (SEMA – Surat Edaran Mahkamah Agung) are directed internally at the Supreme Court and lower courts, whereas PERMA (Peraturan Mahkamah Agung) also includes other parties related to the Supreme Court and lower courts.

2. AIPJ's legal identity programme

Building on these legal foundations, national strategies, community engagement efforts and cross-sector collaboration, the AIPJ sought to address the barriers to legal identity, identified through previous research, in order to expand access, in particular for people who are poor, women, people with disabilities and vulnerable children. The end-of-programme outcome states: 'In selected districts, partner agencies are implementing procedures that increase the number of women and children who receive a legal identity document, to facilitate access to public services, including social assistance programmes.'

AIPJ began in 2011, after a year of transition from the IALDF. The legal identity component was initiated in 2012. AIPJ selected 20 districts in five provinces as pilot areas for legal identity initiatives, and established offices in three provinces, East Nusa Tenggara (NTT), West Nusa Tenggara (NTB) and South Sulawesi, in order to provide permanent support for this work. In Jakarta, five staff work on legal identity, including Wahyu Widiana, the former head of Indonesia's Religious Courts, as a senior adviser (I37).

The legal identity programme is implemented both directly by AIPJ staff and through several civil society organisations. AIPJ continued the Australian government's previous collaboration with PEKKA and also provides financial support to Pusat Kajian Perlindungan Anak (PUSKAPA), a unit in the University of Indonesia focused on child protection issues. Both organisations have been actively involved in legal identity work throughout the

programme period. AIPJ advisors, PEKKA and PUSKAPA institutionalised meetings every two months to review and plan joint legal identity work. AIPJ also supports several smaller local CSOs who assist with mobile and integrated legal identity services: Yayasan Wali Ati (Yasalti) and Yayasan Sanggar Suara Perempuan Soe (YSSP) in NTT, Lembaga Perlindungan Anak in NTB, and MDC in South Sulawesi. For example, over the course of the programme period, 70 CSOs and disabled people's organisations were trained in legal identity services and advocacy for women, children, and people with disabilities. AIPJ has conducted training in 20 districts in five provinces and responded to training requests from other districts outside of the AIPJ focus area.

Efforts to expand the right to legal identity cover multiple phases of the policy process: problem identification, and policy formulation, adoption, implementation and revision. This period of work (2011-2015) could be characterised as one of expansion and refinement, in which CSOs and AIPJ deepened the research base to better understand the nature of the problem, expanded the focus from national to subnational levels, and, based on challenges encountered during policy implementation, subsequently sought to revise earlier policies in order to maximise access to legal identity documents. Section 3.2 and Chapter 5 provide greater detail on the activities and contributions of the CSOs and of AIPJ in their efforts to enhance the right to legal identity.

3. Changes in the justice sector

Building on the work described herein, from 2011-2015 a number of changes took place in the justice sector, both in terms of policy and practice. At the national level, new regulations revised previous legislation in order to streamline registration processes. Budgets have been increased in order to expand services. At the subnational level, integrated and mobile services (Pelayanan Terpadu or ‘Yandu’) began operating to bring legal identity services to the people.

3.1 Types of changes in the justice sector

Development and enactment of new regulation

As illustrated by the timeline in Annex A, during the AIPJ programme period a series of national policies was enacted. In 2012 and 2013, Supreme Court guidelines (SEMA 6/2012) and a Constitutional Court ruling (18/PUU-XI/2013) relaxed restrictions on the one year deadline for birth registration, enabling registration to take place at a district court and removing the requirement that a child over one year of age obtain a statement from the General Courts to obtain a birth certificate.

Most notably, Law 24/2013 on Population Administration revised Law 23/2006. It removes the charge for marriage certificates issued by MoHA for non-Muslim citizens, waives fines for late registration and creates a criminal sanction for collecting fees. The policy obliges the government to conduct outreach to register people and enables registration to be done at the place of residence. These changes aim to directly address specific barriers documented in previous research.

In 2014, the Supreme Court updated SEMA 10/2010 with PERMA 1/2014 Guidelines for the Provision of Legal Aid for the Poor. It aims to make it easier for low income citizens living in remote areas to access services, by clarifying how the courts will waive fees for the poor, hold circuit courts in remote areas and support clients to obtain legal advisory services in courts. The Supreme Court also issued SEMA 3/2014 on Procedures on Services and Volunteer Case Examination for Marriage Itsbat in Integrated Services. This stipulates that Religious Court hearings (Syar’iyah tribunals) can be done by a single

judge, the invitation by the bailiff can be done collectively, and the court decision will be legally binding as soon as the decision is made. This regulation has reduced the costs for implementing Yandu and makes it easier for unregistered couples to obtain a marriage certificate. That same year, Bimas Islam of MoRA issued an intra-ministerial regulation that eliminated the Rp. 600,000 (US\$45) marriage registration fee for services conducted outside of the office, a change considered to be quite significant (I62).

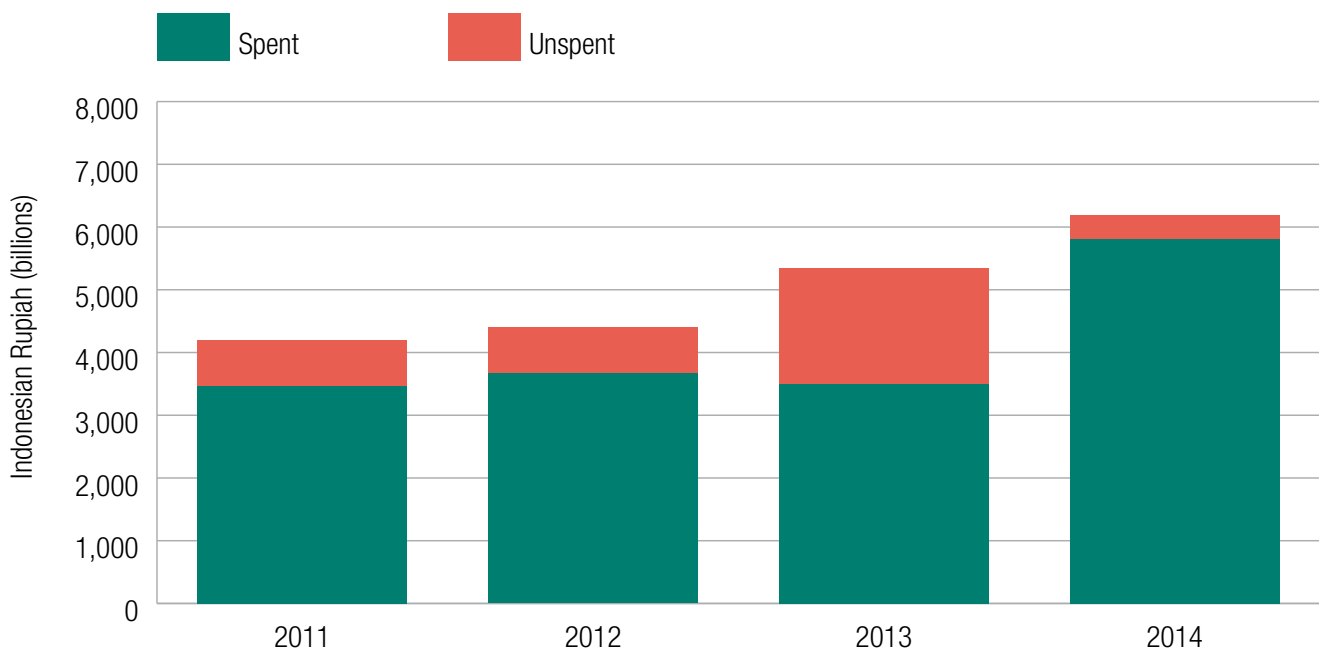
Most recently, efforts have aimed at providing integrated services among the institutions responsible for overseeing legal identity certification. The Supreme Court Regulation No. 1 of 2015 on Integrated Services was issued in August 2015. The regulation provides guidance for more than 350 Religious Courts and 350 General Courts to work with MoRA and MoHA to facilitate access to these services.¹¹ PERMA 1/2015 states that the General Courts and Religious Courts will conduct integrated services in a circuit court, outside the court building, regularly and incidentally. Expenses for court operations and judges’ and officials’ travel will be charged to the state budget. Court fees will be charged to the clients, but they can apply for a fee waiver if they cannot pay themselves. Furthermore, third parties such as CSOs, donors and other agencies may be involved in such services. Clients will receive copies of the court decision on the same day, which can be directly forwarded to the CAPIL of KUA for the issuance of marriage certificates, birth certificates and others.

PERMA 1/2015 also affirms the issuance of a joint regulation (*peraturan bersama*) and standard operating procedures on integrated services by the General Courts and Religious Courts, which is intended to be compiled together with the MoRA Directorate General of Islamic Community Guidance and MoHA Directorate General of Population and Civil Registration. The Supreme Court has established a working group, led by the Head of Religious Courts’ Legal and Public Relations Bureau, in order to advance this process (I37).

Regulation and SOPs for integrated services, both for Muslim and non-Muslim case handling, have been drafted. The MoHA and MoRA have agreed on the content but it is still pending final approval and publication (I37; I61).

¹¹ Workshop.

Figure 1. Religious circuit court budget over time



Source: Religious Court Annual Report 2015, data processed by ODI

One interviewee indicated that the delay was a result of logistical difficulties in bringing together the relevant minister and their senior representatives to sign (I61). However, other interviewees expressed concern that such regulation is not possible or at least will lack the legal basis to bind the parties, because it represents a memorandum of understanding (MoU) that cannot be legalised in the state gazette and thus has no power for enforcement (I42; I62).

In the past year, MoHA has issued several regulations to accelerate the provision of birth certificates. Most recently, Ministerial Regulation No. 2 of 2016 on the Child Identity Card aims to improve data collection, protection and public services for children under age 17. A forthcoming MoHA Regulation on the Acceleration of Coverage of Birth Certificate Ownership aims to simplify the birth certificate registration process, including online services (I65).

Beyond the institutions that directly authorise legal identity documentation, BAPPENAS has also included the issue in Indonesia's Medium Term Development Plan (Rencana Pembangunan Jangka Menengah) of 2015-2019. It includes an increased target for the number of children with legal identity documents, which enables the programme's annual budget to be included in the state budget. In 2015, eight ministries and agencies signed a MoU on accelerating the provision of birth certificates, the implementation of which is being led by the Ministry of Women's Empowerment and Child Protection (I65).

Increase in budget allocation

In addition to passing laws, regulations and guidance, the three institutions responsible for authorising legal identity

documents have all taken steps to increase budgets for this activity. Data from the Religious Court on circuit court budgets over the past four years demonstrates incremental increases in the amount allocated each year: Rp. 4,188 billion in 2011 (US\$313.9 million) to nearly Rp. 6,193 billion (US\$464 million) in 2014 (Figure 1). Not all of the funds allocated have been spent each year, but the proportion spent was significantly higher in 2014 than in 2013 (94% and 66% respectively). PUSKAPA's final AIPJ report indicates that the Supreme Court budget for 2016 to support Yandu implementation is expected to reach Rp. 32 billion (US\$2.4 million), nearly twice that of 2015, as a result of PERMA 1/2015 which directed the courts to support this activity. Several key informants noted that the Supreme budgets allocated to legal identity services have increased seven-fold over the programme period. The MoRA has planned to allocate dedicated funds for legal identity in 2016 and is in the process of compiling data on existing needs. At the end of 2015, the MoHA Director General of Civil Registration issued a letter to the Director General for Local Government Budgets to allocate a budget for legal identity services. The budget is expected to be available in 2017.

Expansion of legal identity services at district level

As national policies and SOPs have been under development, AIPJ has initiated integrated and mobile services (Yandu) at the provincial and district level. The aim is to bring together the relevant institutions and go directly to the people rather than wait for them to come to offices in district capitals (I37; I45; I55). Yandu takes place

in two ways. In some areas, integrated and mobile services are carried out by state institutions, financed through budget disbursements from Jakarta. In others, CSOs are more actively involved and the activities are financed through local government resources. An example of the latter was a marriage confirmation ceremony in Makassar during which 188 marriages and 88 birth certificates were registered in a single day (I17; I55). Now the event is being funded by the provincial social affairs office. In addition to planned Yandu events, officials from other districts have shown their interest in promoting access to legal identity in their areas. For example, officials in the Jambi Province, which is not an AIPJ target area, have requested support from the programme to create similar services there (I42).

Changes in awareness and behaviour of public officials

Changes in policy and budgets, and participation of officials in legal identity services, reflect increased awareness of the issue among public officials and changes in their practices. But interviewees also remarked upon subtler shifts they had observed over time. One person reflected that compared to 2001, when only CSOs were talking about legal identity, other institutions and sectors are now concerned about the issue (I64). Officials from the MoHA were responsive to requests for meetings and participated in Yandu activities even in difficult areas such as Gunung Kidul in Yogyakarta (I62). Interviewees noted an increased awareness in MoHA and CAPIL in proactively serving citizens, including using the local budget to fund a vehicle to increase outreach, rather than simply waiting for people to come to the office (I65). Several provinces have passed laws regarding cooperation with hospitals to help registering new-born children. Those hospitals will send data to CAPIL, thereby making it easier for parents to take care of registration.

Increase in the number of citizens obtaining legal identity documents

As a result of national regulations and guidance, and subnational implementation efforts, more Indonesian citizens have been able to access legal identity services. AIPJ reports document substantial increases in the number of cases and individuals that have accessed legal identity services:

- over 100,000 people were assisted by PEKKA paralegals with legal identity cases
- the number of women bringing their family law and legal identity cases to the Religious Courts doubled from 124,000 to 254,000 in 2014
- the number of cases heard at a circuit court at the village level doubled
- the number of cases brought by the poor, in which the court fee is waived, has more than quadrupled.

Figures 2-4 illustrate the number of people obtaining legal identity documents over time, based on AIPJ calculations using their own data and from public institutions. Figure 2 demonstrates that in AIPJ focus districts, the number of divorce cases has increased substantially over time (note the different axes). In all of Indonesia, the number increased between 2011-2012 and slightly again in 2013 before dropping in 2014. Moreover, this graph demonstrates that the majority of applicants filing for divorce are women, and the proportion of female to male applicants is higher in AIPJ districts than in the rest of the country.

As illustrated in Figure 3, the number of marriages that have been legalised over the past four years has increased, both more sharply in AIPJ focus districts between 2012-2013 and across the whole country in 2014. Data on birth certification was only available in the AIPJ focus districts and shows variable rates over time (Figure 4). The highest number of birth certificates issued was in 2011, which could be a reflection of a backlog of unregistered births.

Table 1 indicates the number of legal identity documents provided through integrated and mobile services over the last two years, based on data from the Religious Courts.

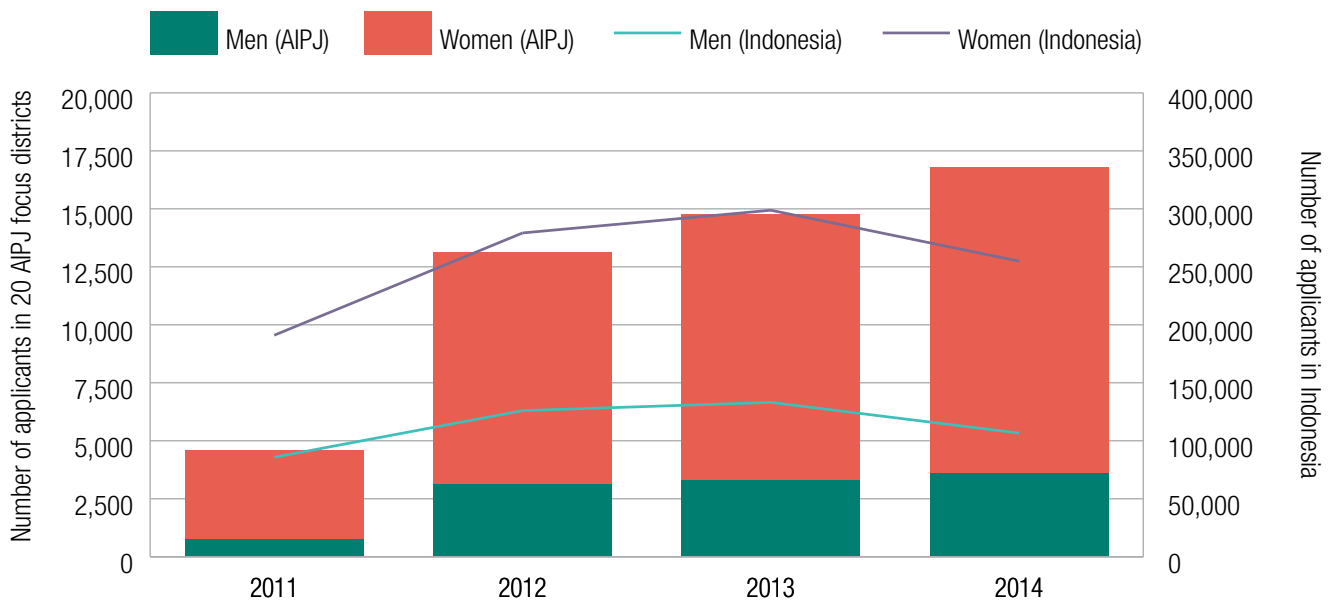
A number of key informants expressed concerns about the completeness and accuracy of public data, noting the substantial variation across districts and provinces which is then aggregated into national statistics. Therefore, these figures should be interpreted with caution. The lack of data also prohibits examination of trends in registering certificates prior to the AIPJ programme period, which would have helped to determine the extent to which services had been increasing steadily over time. In 2015, the Indonesian Statistics Office for the first time introduced questions on birth, marriage and divorce certificates in its household survey of the poorest 40% of households. Standardising legal identity questions across Indonesia's survey instruments will provide more consistent and accurate data for the future (Sumner, 2015).

Table 1. Number of legal identity documents certified through integrated and mobile services (2014-2015)

	2014	2015
Number of integrated and mobile services	76	51
Marriage legalisation cases accepted	3,415	1,897
Marriage certificate to husband	2,618	1,892
Marriage certificate to wife	2,595	1,866
Number of birth certificates issued	2,022	1,890

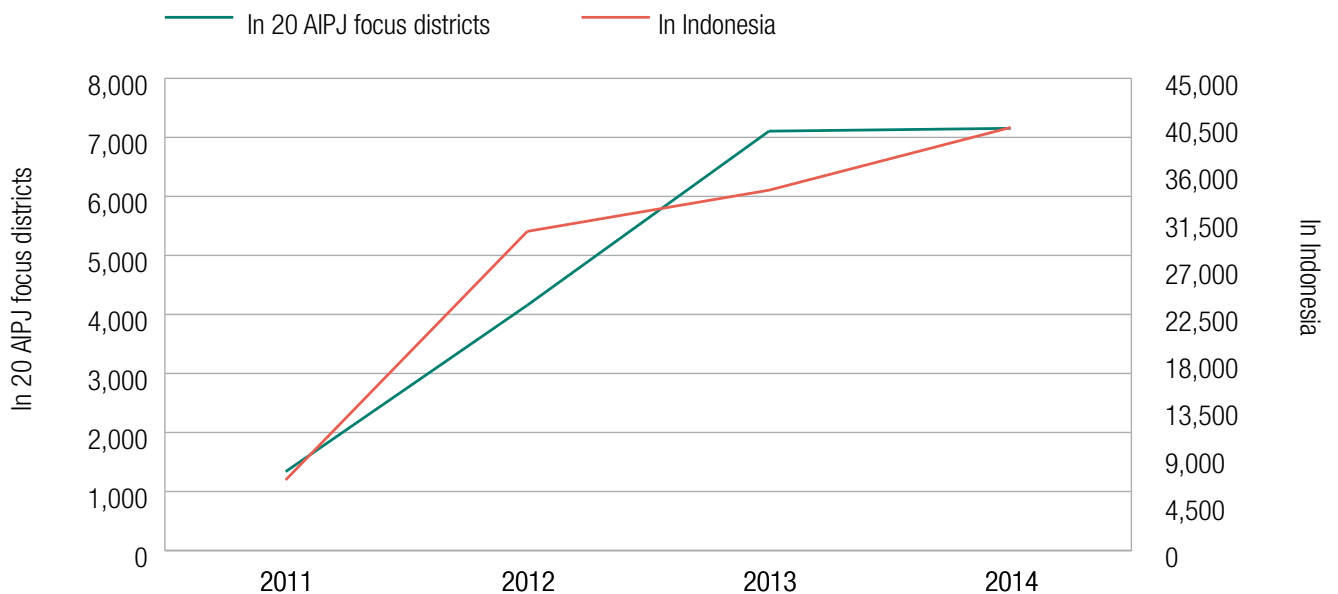
Integrated and mobile services. The 2015 numbers are until October (Source: Badilag, September 2014, updated: SIADPA PLUS-Badilag December 2014, updated: Badilag, February 2016) (AIPJ).

Figure 2. Number of people finalising a divorce case



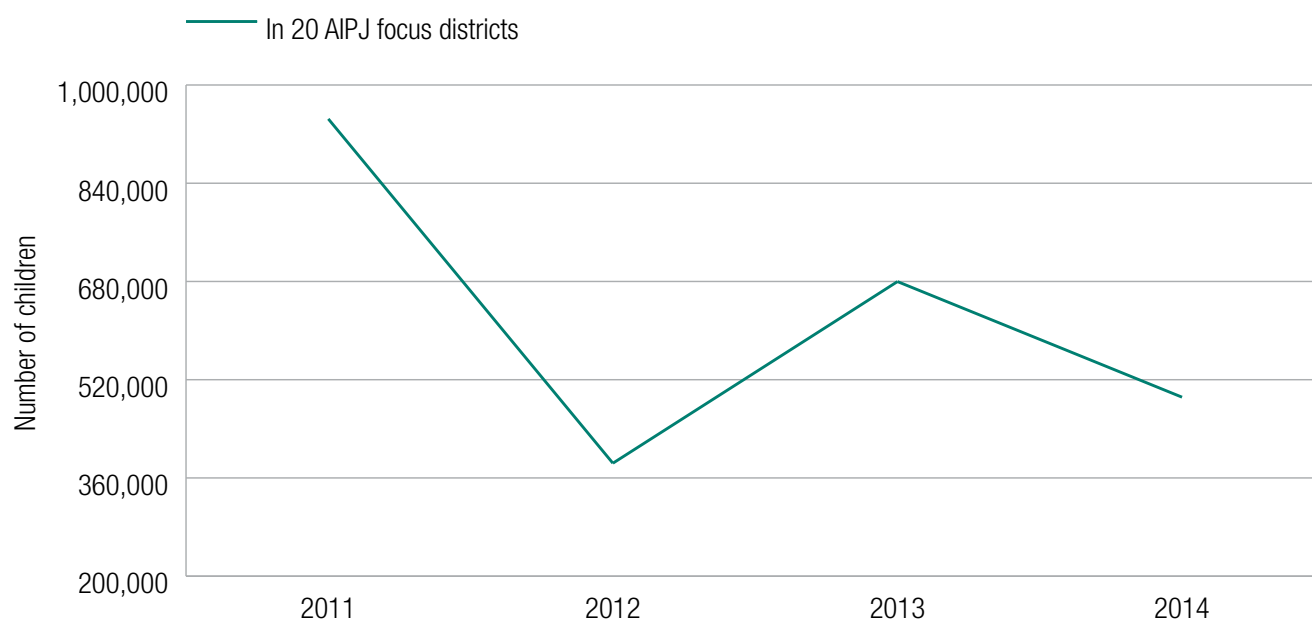
Source: PUSKAPA-KUA database, 2014 (AIPJ).

Figure 3. Number of couples whose marriage has been legalised



Source: PUSKAPA-KUA database, 2014 (AIPJ).

Figure 4. Number of children receiving a birth certificate



Source: PUSKAPA-DISDUKCAPIL database, 2014 (AIPJ).

3.2 CSO involvement in changes in the justice sector

AIPJ staff, CSOs and officials from institutions involved in legal identity services identified eight specific ways in which CSOs have been involved in legal identity processes, which together were perceived to have made a number of unique contributions to change processes. The role of AIPJ is discussed in further detail in Chapter 5. In some cases, AIPJ staff have been jointly involved in some of the same activities as CSOs, so the influence of each is difficult to distinguish from the other.

CSO activities

CSOs have been involved in legal identity processes in eight distinct ways:

- Conducting research and implementation monitoring to identify and document people's needs, barriers to access, challenges in implementation and perceived quality of services provided (I3; I12; I37; I40; I55; I60; I61; I64)
- Drafting legislation (I37; I45; I55; I65)
- Educating citizens about their rights and the importance and process of obtaining legal identity documents (I3; I5; I10; I13; I37; I40; I42; I61; I63; I64)
- Conducting community outreach to find people needing legal identity documents and assisting them in preparing the necessary documentation to apply (I3; I10; I11; I12; I13; I55; I63; I65)
- Facilitating collaboration among the courts, the Office of Religious Affairs and the Office of Population and Civil Registration (I8; I10; I11; I12; I13; I17; I42; I65)

- Conducting evidence-based advocacy to urge officials to pass and implement legal identity regulations (I3; I55; I60; I61; I63; I64)
- Sensitising public officials to gender and disability concerns (I20; I42)
- Sharing Indonesia's legal identity experiences internationally (I45)

Expanding upon previous **research** on access to justice, conducted through IALDF, PUSKAPA, PEKKA, AIPJ and the Family Court of Australia, the AIPJ *Baseline Study on Legal Identity: Indonesia's Missing Millions* was produced. This comprehensive report included a household survey of over 320,000 individuals undertaken by PEKKA in 17 provinces, a cross-sectional quantitative study in West Java, NTB and NTT, a qualitative study in West Java, NTB, NTT, South Sulawesi and North Sumatra undertaken by PUSKAPA, an analysis of data from the Indonesian Central Bureau of Statistics' National Socio-Economic Survey, the Supreme Court, MoHA and MoRA, and in-depth interviews with policy makers and service providers in West Java, NTB, NTT, South Sulawesi and North Sumatra (Sumner and Kusumaningrum, 2014). This research systematically documented gaps in legal identity services and barriers to access.

Evidence from the *Missing Millions* research informed subsequent advocacy efforts calling for changes to public policy and implementation. Subsequently, PEKKA has been involved in early processes to capture field experiences and challenges in applying Yandu, which are informing the development of the Yandu SOP. PEKKA and PUSKAPA

have been conducting exit surveys to monitor the quality of integrated and mobile services.

As several informants noted, CSOs capture people's needs (I40) and document demand (I5). CSO research was perceived to be useful by public officials, for example sensitising them to the issue of early age marriages (I61). In one interview, the official requested that a more recent survey on court services be conducted to provide updated information (I63).

PUSKAPA, together with AIPJ staff, was actively involved in **drafting regulations** and guidance documents, including PERMA 1/2014, SEMA 3/2014, PERMA 1/2105 and the SOP for Yandu. They had previously been involved in developing the National Strategy on Access to Justice and are now contributing to the second national strategy.

PEKKA led efforts to **educate community members** on their right to obtain legal identity documents, the importance of obtaining them, the expected costs (free in many cases) and the process by which to do so. This socialisation is done in informal ways: at the local market, at school, and other community gathering places. AIPJ produced user-friendly materials to explain the processes to individuals and to service providers, including a full map of the process for the agencies and a simplified version for clients (I3). Outreach workers spoke about changes they had observed among parents as they became aware of the importance of securing birth certificates for their children (I10). Officials characterised PEKKA's role with community members as effective mentoring (I63). In addition to informing citizens about their rights, PEKKA members also proactively **reach out** to community members to support them through the process of obtaining identity documents. They help gather the documents necessary to apply for legal identity certificates and for fee waivers, and help prepare the necessary forms.

One of the activities mentioned most frequently was the role of CSOs in **facilitating collaboration among institutions** authorised to certify birth, marriage and divorce. This facilitation happens at the national level among the Supreme Court, MoHA and MoRA, for example in advocating a joint regulation among the three institutions to offer legal identity services. It also takes place at the local level, among judges, CAPIL and KUA officials. In NTB, for instance, prior to a Yandu visit, CSOs and AIPJ staff convene everyone to plan the event, evaluate data and unify their vision and mission (I11).

In addition to conducting education and outreach, and facilitating institutions to provide integrated and mobile services, CSOs have advocated that officials take stronger action on legal identity. This engagement has been persistent in continually pushing for change. According to one coordinator at a national CSO:

'The role of PEKKA facilitators in local regions has been significant. They are very keen in pushing the local government to fulfil people's needs'.

As already noted, this advocacy is grounded in evidence and approached in a collaborative rather than confrontational way. Beyond advocating what officials should do, CSOs and AIPJ have also advocated how and for whom these efforts should be focused. Several officials noted the role of CSOs in **sensitising their institutions** to gender and disability considerations. AIPJ-sponsored workshops helped to raise the profile of these issues. Officials also learned by observing how events, such as the mass Itsbat marriage ceremony, were organised in order to be accessible to people with disabilities.

Finally, both PUSKAPA and PEKKA have helped to **share Indonesia's legal identity experiences internationally**. For example, BAPPENAS requested PUSKAPA to provide technical support as a member of the government's National Steering Committee on Civil Registration and Vital Statistics (CRVS), and future efforts aimed at achieving the Sustainable Development Goal on legal identity and the Asia-Pacific regional goal on CRVS.

Unique role of CSOs

Among these eight activities, many could be, and to some extent were also conducted by other actors: religious and government officials and/or AIPJ staff. However, informants noted several ways in which CSOs make a distinct contribution to these processes, by:

- Serving as a bridge between the people and the government (I5; I11; I12; I23; I37; I40; I42; I61; I65)
- Providing the glue that facilitates cross-institutional collaboration (I8; I11; I12; I13; I17; I42; I61; I65)
- Enabling more efficient (I8; I10; I11; I55; I65) and economical services (I10; I13; I23) that were more targeted at low income households, women and people with disabilities (I5; I10; I12; I13; I20; I37; I55)

A number of informants characterised the role of CSOs as a **bridge between the people and the government**, linking the needs and demands of citizens to services supplied by the state. By law, the Religious Courts are prohibited from soliciting cases and must wait for people to come to them – this is known as the 'active system' (*stelsel aktif*) nature of the law and applies to Law 23/2006 on Population Administration. Although Law 24/2013 amended the earlier regulation to oblige the government to conduct outreach to register people, the *stelsel aktif* legacy still guides some institutional behaviour.

Religious Court officials remarked that CSOs are closer to the people and so have a better awareness of their needs, which CSOs can bring to the attention of the courts:

'Without [CSOs], we can't serve the public to the best of our abilities' (official, provincial Religious Court)

'The role of CSOs is crucial. ...Most likely [leaders within the courts] do not know what the people's needs

are. CSOs find and deliver those needs to us' (official, General Directorate of the Religious Court)

'The duty to make people aware of their rights is not only the duty of the state, but CSOs could also play a major role. They are closer to the people, so they know the problems and needs, rather than the courts. So, CSOs help overcome our limitations in knowing people's problems' (former official, Religious Court)

PEKKA staff also noted that in communities without PEKKA members, even when legal identity services were available, women were not accessing these services.

In addition to linking people with the government, informants highlighted the important role CSOs and AIPJ played in facilitating cross-institutional collaboration. Each institution charged with certifying legal identity documents reports upwards to its institutional superiors, and has few incentives, or the mandate, to work with other institutions. Officials remarked that this role fell outside of their job description and that they needed someone to coordinate among them to solve problems together. Institutions may be too proud and may need intermediation.

'Support from outside parties is needed, since state institutions still have a tendency to lock up in routines and lack the initiative to innovate' (former officials, Religious Court)

'An external party can embrace all of the agencies. ... AIPJ brought everyone closer. ...It was difficult because each was very independent in attitude. AIPJ was the glue binding us together' (official, CAPIL Office)

Thus, by facilitating collaboration across institutions, CSOs and AIPJ have helped to reduce institutional siloes and have fostered joint action on legal identity.

Finally, beyond the role of bridging people and the government, and across state institutions, informants identified the role of CSOs in **enabling more efficient, economical and better targeted legal identity services**. PEKKA's national reach and embeddedness in local communities has enabled them to reach many more people than the government or a new organisation could have done. By communicating with judges and the family of a man from whom a woman is filing for divorce beforehand, and by working with people to prepare the required documentation, PEKKA advocates have helped to streamline processes. They have helped to ensure that community members have known about fee waivers, that charges were per case rather than per individual, and about the potential for court brokers to overcharge, thus making it more economical for people to obtain legal identity documents.

By gathering more comprehensive data and by developing long-term relationships in the community, CSOs have also helped to ensure that legal identity services

have reached those in greatest need. PEKKA and PUSKAPA gather information from individual households, rather than ask the village head to report on behalf of the entire community. Their systematic approach can produce more accurate information on which budget allocations can then be made, rather than having to rely on estimates. In some cases, where the village head has organised legal identity services, the benefits have been restricted to a select circle of people. A number of informants remarked about the focus of CSOs and the AIPJ legal identity programme on reaching the poorest, women, people with disabilities, and Indonesian migrant workers:

'If CSOs were not involved, our agency would only serve those who come. The poor would be left behind' (official, CAPIL Office)

'CSOs can reach the people who are unreachable by the government and court' (official, Religious Court)

Key features of the CSO-AIPJ legal identity approach

The previous two subsections identified the activities in which CSOs, and, in some cases, AIPJ staff, were involved, and which aspects were perceived to be unique contributions. Two features of the CSO-AIPJ legal identity approach were noted repeatedly, and are worth highlighting here: the importance of developing relationships, and the use of a collaborative, evidence-based approach to advocacy.

Much of the legal identity work was perceived to be possible because of **relationships** that developed among CSOs, the courts, AIPJ staff, local government, national ministries, Bappenas and other NGOs and donors, many of whom had never worked together before. One informant noted that, over the last 25 years, this was the first time it had been done so effectively, paralegals sitting alongside high level officials (I5).

Respondents spoke of the time it takes to understand one another's roles and perspectives, and to build trust and respect (I3; I5; I8; I10; I42).

'The court is more open to outsider involvement because of the continuous relationship with donor agencies and others. ...There is better communication between the Supreme Court and CSOs because each party has become more familiar with the other party's conduct' (former official, Religious Court)

People from different institutions gave specific examples of how communication and interactions had become more fluid and less formal over time: rather than sitting in the waiting room for an appointment, people can now just send an SMS or pick up the phone. A judge from the Religious Court may stop by, or invite an official from another institution to the court (I8; I12; I13; I63). Prior to

the first Yandu visit in North Sumatra in December 2013, AIPJ advisors met with the Deputy Chief of Religious Court to ask for his blessing and support (I62). PEKKA facilitators had personal relationships with the former head of the Religious Courts and could contact him directly (I10; I62). These cross-organisation, cross-sector relationships have been facilitated by multi-stakeholder fora and annual stakeholder meetings (I5; I8; I10). AIPJ and CSOs identified among themselves who would serve as the key contact with different institutions (I62).

Informants indicated that personal relationships and a less formal approach helped to resolve the vast majority of problems (I62). These relationships, however, have not been without their challenges. Institutions have different ways of working, and different approaches, on how to engage the community. CSOs have had to assert their independence and have explicit discussions about who makes decisions and about who owns and can use information, in what way (I5).

A second notable feature of the legal identity work is the use of a **collaborative, evidence-based advocacy model**. Systematic, community-level research has served as the basis for policy recommendations and changes in practice. Moreover, by involving the courts from the outset, they were more receptive to the findings (I5; I23; I42). Initially, some court officials raised concerns about the possibility that earlier IALDF research on access to justice would expose the courts' weaknesses. The Head of Religious Court at that time convinced his fellow officials and judges to support the survey, persuading them that the results would ultimately be useful for the courts to assess their situation and progress, which has established a precedent for research and collaborative efforts with CSOs that continues today.

'Reform will remain in place. But, without CSOs, it is most likely that we will not know the needs of those seeking justice. These leaders could be in denial about what happened if there are no outsiders who ...push them. They will be in a comfort zone. It is like a house; those who are inside cannot see that there is something wrong seen from the outside.' (official, General Directorate of the Religious Court)

The nature of the relationship between CSOs and government officials is decidedly a collaborative one. Court officials underscore the importance of a non-confrontational approach:

'We said to [CSOs] that, if they have critiques, they can express and discuss it with us. We only ask them not to criticise us publicly if they don't have to. In doing this, we build a certain level of trust. We ask CSOs not to tell the judges what to do. They have to find the way to approach the judges and tell them in an acceptable way' (former judge, Religious Courts)

'CSO activists working with us are generally still young in age. They may not understand well about the manner of bureaucracy. ...Once people in the bureaucracy feel offended, they will be resistant to the input or advocacy' (official, General Directorate of the Religious Court).

According to CSOs, they take an insider approach: rather than holding demonstrations or launching petition drives, they engage in high-level advocacy, both going to the court to advocate for change, and also bringing officials out into the community so they can see the problems for themselves first hand (I5). CSOs noted the difference in their approach over time: previously, they voiced their protests on the street, whereas now they debate ideas in an office and foster strategic solutions (I17; I64).

'It does not mean that CSOs are losing their integrity and ability to protest and voicing the people's rights. Individually, the CSO officials have good relationships with the government officials. Yet, it does not affect the role to criticise the government.'

Thus, it is not that CSO advocacy has stopped; rather, the way in which it is taking place has changed. Several interviewees shared this opinion that working with the government did not diminish their ability to be critical; one person perceived the most critical role of CSOs was as an opposition force to the government (I60).

3.3 Key factors perceived to be associated with changes to the justice sector

As outlined herein, and illustrated in the timeline, the past decade has witnessed substantial changes in the Indonesian justice sector related to legal identity rights, including new national regulations that protect these rights by law. In practice, however, the ways by and the extent to which, these policies have been carried out across different jurisdictions, and by different institutions, has varied substantially. Several interviewees remarked that the current challenge is not a lack of government programmes but rather the implementation and enforcement of them (I64).

'From the beginning, there has been a strong sense of the fulfilment of human rights in the legal identity initiative. Today, the challenge to legal identity is more on service delivery, how institutions can provide a good service to the public' (coordinator, national CSO)

Variation in policy implementation, particularly at the early stages, is not uncommon. These differences offer the opportunity to identify factors that may facilitate or hinder policy implementation, and, in this case, the fulfilment of legal identity rights. Box 1 describes challenges, experimentation and learning through implementation.

Variation in policy implementation across institutions and jurisdictions

Respondents gave specific examples of differences in the receptivity of different institutions and among different local officials (I10; I45; I55), the extent to which different stipulations of the policy were implemented, such as the removal of fines and fee waivers (I3; I10), the amount of budget commitments that were disbursed (I11; I55), and the extent of facilitation required by CSOs and AIPJ to coordinate the courts, CAPIL and KUA (I45).

For example, one regional government promised Rp. 1 billion (US\$75,000) for legal identity services that has not yet been disbursed (I11). Across districts in NTT and NTB provinces, in some areas, the CAPIL is supportive but the district court is not; in others, the courts are proactive and the other institutions are less engaged (I10; I45). At the national level, a number of informants remarked about the differences between the engagement and leadership of the Religious Courts compared to the General Court, MoHA and MoRA (I3; I5; I23; I37; I45; I55).

The recent Village Law, which allocates funding and decentralises authority to the village level, increases the scope for variation across the country (I5) and, according to one informant, may in part account for slow progress in expanding legal identity services (I64). Rotation of judges and officials at each of the relevant institutions¹² across different geographic areas offers the opportunity to spread new ideas and legal identity initiatives. However, it also requires CSOs to rebuild relationships with new officials, and can leave reform efforts and budgets vulnerable to being overturned, if the changes are not institutionalised, and rather dependent on an individual.

Informants identified eight factors that were perceived to be associated with changes in the justice sector and the extent to which policies had been implemented. One set of factors related to more technical and logistical matters: the importance of a solid legal basis and clear mandate, sufficient capacity, financial incentives and the nature of the physical geography. Another set was less technical and more related to relational and cultural issues: the influence

Box 1. Challenges, experimentation and learning through implementation

As with all programmes, implementation can give rise to unexpected challenges. Yandu has attempted to adopt a spirit of continuous improvement, learning from and adapting to challenges as they arise.

Informants noted several cases where problematic marriages were legalised, including using Yandu services to register multiple marriages (I61). Some couples are believed to purposely not register the marriage at normal registration process to avoid legal or other consequences. Most of these marriages are polygamous, that is second marriage or more (I61). There are also cases of using a different name of a married person in the marriage certificate and identity card.

There have been data discrepancies between the court and KUA documentation. In one instance, the CAPIL Office in Cibinong was sued for issuing a birth certificate (I61; I63). Families have found it difficult to provide certification of their income status to be eligible for fee waivers. In some areas, individuals have helped to fund Yandu services, though this has raised some concerns regarding potential manipulation of services to further political or corporate interests (I63). The Religious Courts have a reporting system to document activities and budgets but in practice reporting has been variable, slow and in some places perceived to be inaccurate (I63).

In its relatively short life, the Yandu programme has made adjustments over time. For example, they have changed documentation requirements for fee waivers to include alternative forms of documentation, such as national health security cards and rice cards (I62). As described in section 7.2, different districts have been experimenting with different approaches, including working with hospitals so births are immediately registered with CAPIL Office.

Several informants suggested that Yandu should be a time-bound initiative as a means to reduce the backlog of undocumented cases and fulfil the previous commitment that all children have birth certificates by 2010. Another suggested that Yandu could become more selective, providing certificates for couples who have not had a marriage book for at least five years (I62). The Yandu programme can be seen as one option, but it is not likely to be a sufficient way to facilitate universal birth certification (Sumner, 2015:3). The ultimate goal is a permanent system of legal identity, consistent with international civil registration principles that registration be continuous, universal and compulsory (I61; I62; I64). This will require further regulatory reforms (Sumner, 2015:3). It also entails promoting increased citizen awareness on legal identity (I61).

In the future, as the legal identity work moves into an even more intensive implementation phase – compared to earlier agenda setting, policy formulation and policy adoption phases – documenting and sharing these lessons will be all the more important. The move towards decentralization offers a greater opportunity for experimentation, but also a more formidable challenge in sharing experiences.

12 Several informants with whom we spoke had worked in other districts and provinces and had just been in post for the past 1-2 years.

of leadership and the nature of the institutional culture, local customs, shared vision and a service orientation. Surrounding these factors is the overarching governance context in Indonesia, which some informants thought strengthened the spirit of judicial reform, whereas others perceived judicial institutions as being less influenced by broader reform movements (I5; I42).

Relational factors

One of the most common factors that respondents perceived to be associated with the extent of changes in the justice sector was **leadership and the nature of the institutional culture** that its leader created. Despite the fact that the MoHA is identified in national regulation as the principal institution overseeing legal identity and coordinating other agencies, there was broad consensus that the Religious Courts led efforts to create national policy change and engage with CSOs. Informants used terms such as supportive, innovative, progressive, proactive in engaging CSOs and other institutions, closer to the people, open, an attitude of togetherness, attentive to research findings, exceptional, trusted, and positive culture (I3; I5; I23; I37; I45; I55). In contrast, they characterised other institutions as being risk averse and conservative. The Ministry of Home Affairs is perceived to be a more rigid bureaucracy and CSOs must meet and convince more layers of officials in the MoHA compared to the courts. The differences in institutional support are evidenced in the acceptance of Yandu with the PERMA issued by the Supreme Court, whereas the MoHA and MoRA have not yet enacted similar regulations supporting integrated and mobile legal identity services.

Nearly half of the informants independently mentioned Wahyu Widiana, the former head of the Religious Courts, by name as being instrumental in realising rights to legal identity (I3; I5; I10; I20; I45; I55; I63; I65). During his tenure, he created 'Pojoy Dirjen' (the Director General's Corner) on the court's website, to communicate new policies and motivate staff and judges in lower Religious Courts, creating 'troops' for innovation in local regions (I42). Several other informants also mentioned the influential role of the Chief Justice of the Supreme Court (I5; I42).

Court officials speculated that the leadership of the Religious Courts may be for several reasons. The Religious Court's historical marginalisation by the state, reflected in small budgets and the poor condition of courthouses and facilities, and the subsequent one roof system, may have motivated the Religious Court to prove itself. In addition, the Religious Court may be more inclined to work with CSOs, and on women's issues and gender equality in particular, because the majority of their service users are women (I23). The saying 'Ikhlās Beramal' ('sincere charity') sets the tone for the institution's work (I63).

Beyond national institutions, informants also provided specific examples of leadership at the district level. In

Langkat, North Sumatra, CSOs have facilitated Yandu services twice, after which local institutions have assumed responsibility and now CSO involvement is no longer needed (I45). In the remote district of Atambua, NTT, informants reported that a single court has delivered 30% of the total marriage certificates and has engaged a local bank in providing financial assistance (I3). In Bogor, the head of the CAPIL office pushed for a new policy to register inter-religion/inter-racial marriages, something that had previously not been acceptable (I40). In Surakarta, Central Java and Sikka, NTT, the CAPIL Office is working with hospitals and midwives so that births are immediately reported to their office (I64; I65).

At the subnational level, **local customs** influence the extent to which legal identity policies are implemented. For example, in one district in Central Java, people are required to donate a tree as a requirement for obtaining a marriage certificate. In one district in Sumatra, to get a marriage certificate, people are obliged to memorise the Quran. In other regions, people have to provide proof that they are HIV negative. In Waingapu, residents do not have birth certificates because the tribal chief does not have these identity documents (I40).

Two additional factors were identified by court officials as being critical for joint collaboration on legal identity: a **shared vision** among the different actors involved, and a **service orientation** (I42; I63). A former official noted that if CSOs or other institutions were working for their own benefit, as individuals or as an organisation, rather than for the wider benefit of the people, then the court would not work with them.

Regulatory, capacity, financial and logistical factors

Distinct from the relational factors discussed above, informants identified another set of factors that could potentially be addressed through regulatory, capacity, financial and logistical means. A key factor mentioned by a number of people was the importance of a **solid legal basis and clear mandate** (I3; I11; I13; I40; I42; I45; I55). The Religious Courts, for example, have a clear mandate to register Islamic marriage. For non-Muslims, marriage can be certified by either the General Courts or CAPIL. General Courts also oversee criminal as well as civil matters, so family law is perceived to be given lower priority. Informants mentioned the importance of specific pieces of legislation (23/2006, 10/2010, 24/2013, 3/2014 and 48/2014) which serve to guide officials, particularly at the subnational level, and those who may be more risk averse and looking for direction from their superiors.

More fundamentally, several informants questioned whose role it was to access and provide legal identity services. Some civil servants and state agencies still see legal identity as the responsibility of individual citizens (I40). CSOs questioned why volunteer paralegals had to fulfil the state's responsibility for legal identity rights (I5).

Another factor perceived by informants to influence the variation in policy implementation was the **capacity of CSO and state institutions**. Differences in capacity relate to organisations' knowledge and experience with legal identity (I3; I40; I45; I55). PEKKA, for example, has been involved in paralegal work for nearly a decade. Other CSOs are newer to this area and have less experience. Differences in capacity also refer to government management capacity (I64) and the existence of human and financial resources – the number of staff necessary to process 100 cases a day rather than 10, sufficient staff so that if one person is in the field there is someone else available to provide services in the office, and vehicles to enable mobile services (I3; I5; I12).

A factor identified as hindering implementation is the **financial disincentive** for KUA to provide mobile services. When marriages are registered onsite at its office, the parties are charged a fee. However, with the mobile

and integrated services, in which marriage is conducted outside the KUA building, people will not have to pay, thus removing a source of revenue for the institution (I55). In addition, there have been complaints from KUA staff who do not receive additional compensation for outreach services, unlike civil servants who receive an allowance when on duty outside of the office (I61).

Finally, the **physical geography** of different provinces affects the ability of CSOs and officials to implement integrated and mobile legal identity services (I5). In contrast to NTT, the NTB province is relatively flat, with good roads, which makes it easier to access most of the area by land, and in less time.

The latter three factors – capacity, financial structures and geography – highlight the importance of working with district management systems, and not simply the justice system, in order to facilitate policy implementation.

4. Changes in CSOs

The previous sections deal with changes in policies and practice within the justice sector. This section discusses changes in CSOs through their involvement with the AIPJ legal identity programme. AIPJ reports document the number of people involved in new activities. For example, from 2014-2015, they report that 331 service providers and 147 PEKKA cadres have learned and applied new skills in implementing integrated and mobile services in their respective areas.¹³ Rather than repeating that information here, this section provides an overview of five types of change that other organisations observed in CSOs' work and that CSOs noted about themselves. Over the course of the AIPJ programme period, informants reported that CSOs are expanding their networks, broadening their practical knowledge and repertoire of activities, increasing their human resource capacity, increasing their organisational profile, and enhancing personal development and fulfilment.

The most common change mentioned by informants was the **expansion of CSO networks** (I3; I5; I10; I42; I45; I55). Through their legal identity work, CSOs gained access, in some cases for the first time, to influential actors and institutions, including the Chief Justice of the Supreme Court, Head of the Religious Courts, senior officials in the Ministry of Home Affairs, the Ministry of Religious Affairs, Bappenas and TNP2K (Tim Nasional Percepatan Penanggulangan Kemiskinan / National Team for the Acceleration of Poverty Reduction). PEKKA members noted that they now have friends in the court, are trusted in Parliament and recognised internationally. Paralegal training fostered relationships among CSOs and legal experts at Bandung University and the Monash University Family Law Assistance Programme. Furthermore, legal identity work has strengthened and broadened networks between CSOs working at the national and subnational levels, and those working on different but related issues – for example, research, community engagement, child protection and legal aid.

Second, CSOs have increased their practical knowledge on legal identity issues and regulations (I42), and **broadened the repertoire of activities** in which they are involved (I3; I5; I8; I45).¹⁴ University of Indonesia-based PUSKAPA was initially primarily focused on conducting research but, through the legal identity work, has become even

more involved in advocacy. Reciprocally, PEKKA had long standing community engagement programmes and, over time, has become more actively involved in research, so it has become less of an extractive exercise to one that could offer direct benefits to PEKKA members. These shifts are reflected in how CSOs define and frame their work, as rights-based, evidence-based advocacy organisations (I3; I5).

Third, with support from AIPJ, CSOs have been able to increase their **human resource capacity**, which, in turn, has enabled them to expand their work and reach more community members (I8; I42; I45). CSOs mentioned that their work on legal identity has **raised their profile** internally within their broader institution, with local communities and at national and international levels. CSOs reported an increase in requests for their involvement (I10; I45): 'We are a stronger organisation. Everyone is calling us now'. Officials mentioned the desire to have more PEKKA chapters throughout the province to expand legal identity outreach (I11).

Finally, CSO members and staff spoke about how their involvement in this work has led to **greater personal development and a sense of fulfilment** (I10). PEKKA members spoke poignantly about their pride in being affiliated with the organisation and about the sense of happiness and peace that the work gives them.

'We're all victims, now we're fighters.'

Among these five types of change, human resource capacity is dependent on continued financial resources. The other changes, however, can be sustained without additional resources – relationships with government institutions, new skill sets and an increased organisational profile will remain once AIPJ funding has ended. PUSKAPA, for example, is now considering establishing a forum of CSOs involved in legal identity work (I55). Moreover, these networks, abilities and attention can contribute to the institutional sustainability of these organisations and may help them to secure new sources of funding to support their work. As one CSO staff member noted:

'In approaching donor agencies, we are [now] not just offering our ability to conduct research but also in advocating policy.'

13 Outline of legal identity programme_250915 'close to community' workshop.

14 There were differences of opinion in terms of the extent to which the emphasis of CSOs' work had shifted over time; however, more people with whom we spoke indicated that their repertoire of activities had broadened than those who indicated this was not the case.

5. AIPJ's contribution to legal identity

As discussed, many of the activities in which CSOs were involved were jointly conducted with AIPJ staff. These collaborative efforts included conducting research, drafting regulation, conducting evidence-based advocacy, increasing sensitivity to gender and disability issues, and facilitating coordination among state institutions responsible for legal identity certification. In addition to these activities, informants mentioned two other ways in which AIPJ contributed to changes in the justice sector and changes in CSOs.

First, AIPJ and its predecessor programmes **facilitated linkages and access** to senior officials, both within Indonesia and to the Family Court of Australia (I5; I23; I42; I63). For some CSOs, this provided entry to institutions with whom they had never interacted previously and may not have always been able to gain access on their own. Linking the Indonesian courts to the Family Court of Australia offered concrete examples of how to manage their work. The Supreme Court website and information technology management system, and SEMA 10/2010, were developed following a visit to Australia.

Second, AIPJ provided an important source of **funding** for legal identity work (I3; I8; I23; I63; I65). This funding enabled CSOs to increase the size of their organisations.

It supported implementation efforts, including funding for vehicle renovations and transportation so that local officials could conduct mobile clinics. It provided bridge funding to conduct integrated and mobile outreach services in areas where local government had committed but not yet disbursed funds.

'The existence of aid such as AIPJ has been crucial in enabling us to initiate a new programme that cannot be covered by the state budget or took time before it can be implemented because of the state budget process' (official, General Directorate of the Religious Court).

AIPJ staff and state officials noted that AIPJ was relatively unique in its work with the Religious Courts and on family law matters (I3; I23; I42). They noted that most other donors tend to work with the General Courts rather than the Religious Courts. Furthermore, many countries do not place much attention on family law, where the majority of plaintiffs are women, so considered it an achievement to convince the Australian government to support development efforts for the past decade and a half that focus on women's needs.

Conclusions

Efforts to ensure the right to legal identity, grounded in Law 39/1999 on Human Rights and Law 23/2006 on Population Administration, have evolved over the past decade. Building upon previous work, the AIPJ programme period from 2011-2015 could be characterised as one of expansion and refinement, in which CSOs and AIPJ have deepened the research base to better understand the nature of the problem, expanded the focus from national to subnational levels, and, based on challenges encountered during policy implementation, subsequently sought to revise earlier policies in order to maximise access to legal identity documents. CSOs and AIPJ have been involved

in a variety of activities, from education and outreach, to facilitating collaboration among state institutions and drafting legislation. They have employed a collaborative, evidence-based approach to advocacy that relies heavily on building relationships across institutions and between citizens and the state. The variation in change across different jurisdictions and institutions offers insights into salient factors that may affect the extent and type of change, including the importance of leadership, a solid legal basis and mandate, and the need to focus on district management systems as well as the judicial system in order to facilitate policy implementation.

Annex A. Timeline of key events in legal identity

1990

Indonesia ratifies the Convention of the Rights of the Child through Keppres 36/1990

1999

Law 39/1999 on Human Rights

2002

Law 23/2002 on Child Protection

2005

- PEKKA paralegal capacity development
- Initiation of multi-stakeholder forum (MSF) for citizen identity cards
- Mobile service for civil registry conducted by Ministry of Home Affairs in response to Aceh tsunami

2006

Law 23/2006 on Population Administration – a free birth certificate if obtained within 60 days of birth

2007

Regulation of Government of Indonesia 37/2007 on the Implementation of Law 23/2006 concerning Population Administration

2008

- National Strategy on Universal Birth Registration – goal that every child will have a birth certificate by 2011
- Presidential Decree 25/2008 on Population Registration and Civil Registration – birth registrations that exceed the time limit of one year will be carried out by the verdict of the district court

- ‘Providing Justice to the Justice Seeker: A Report on the Indonesian Religious Courts, Access and Equity Study – 2007’ published

2009

BAPPENAS publishes National Strategy on Access to Justice

2010

- ‘Access to Justice: Empowering female heads of household in Indonesia’ published
- ‘Providing Justice to the Justice Seeker: A Report on the Access and Equity Study in the Indonesian General and Religious Courts 2007–2009’ published
- SEMA 10/2010 on Guidelines for the Provision of Legal Aid

2011

Social Protection Programme Data Collection (PPLS) and consolidation of this data in the Unified Database for Social Protection Programmes

2012

- The Constitutional Court of Indonesia ruled that Article 49(1) of the Marriage Act must now be construed as: A child born out of marriage has a civil legal relationship with the mother and her family, and the father and his family [provided that paternity] can be proven by science and technology and/or another form of legally-recognised evidence that the father has a blood relationship with the child (Decision No 46/PUU-VIII/2010)

- Ministry of Home Affairs begins to develop National Road Map on Civil Registration 2013–2020
- SEMA 6/2012 Guidelines for the collective establishment of birth registration that exceed the time limit of one year

2013

- Constitutional Court Decision No.18/ PUU-XI/2013 removing the requirement in Law 23 of 2006 on Administration of Citizenship that a child over one year of age obtain a statement from the General Courts in order to obtain a birth certificate
- Law 24 of 2013 on Population Administration revised 23/2006, removing the charge for marriage certificates issued by MoHA for non-Muslim citizens, replacing the requirement for a marriage certificate for couples where (i) they have a religious marriage but have not obtained a marriage certificate and (ii) the father acknowledges his child in a statutory declaration; obliging the government to conduct outreach to register people; waiving fines for late registration by civil registry officials; creating a criminal sanction for collecting fees; and enabling registration to be done in the place of residence
- National Strategy on Access to Justice updated to include a greater focus on the importance of providing legal identity

2014

- PERMA 1/2014 (Guidelines for the Provision of Legal Aid for the Poor) updating SEMA 10/2010, clarifying how the courts will waive fees for the poor, hold circuit courts in remote areas and support court clients who do not have access to legal information to obtain legal advisory services in courts across Indonesia
- SEMA 3/2014 guidance letter [Procedures for servicing and inspection of cases of voluntary Muslim marriage (itsbat) in integrated services]
- Law 35/2014 on revision to Law 23/2002 on Child Protection
- Ministry of Religious Affairs Implementing Regulation Number 48 of 2014 revising Implementing Regulation 47 of 2004 on tariffs and types of income which removes fees for delivering marriage certificates to Muslim citizens at the KUA
- Director General of Islamic Guidance at the Ministry of Religious Affairs Practice Direction stipulating free of charge marriage certificates at Yandu services
- **Legal clinic for justice (Klik) initiative begins**
- **Mobile and integrated services (Yandu) begins**
- **'AIPJ Baseline Study on Legal Identity: Indonesia's Missing Millions' published**

2015

- PERMA 1/2015 (replacing SEMA 3/2014) advising Religious and General Courts of their role in supporting integrated and mobile services
- Circular letter (Surat Edaran) from the Director General of Islamic Guidance
- 2015-2019 National Medium Term Development Plan, which includes improved access to legal identity as a development priority
- SOP developed on the implementation of PERMA 1/2014 and PERMA 1/2015
- **PUSKAPA letter to 13 regions requesting the removal of fines for late birth registration**

AIPJ active

State activities

CSO/AIPJ activities and/or involvement

Source: Indonesia's Missing Millions, p. 23-24; workshop; 2014 six-monthly report pp. 9, 11, 26, 37.

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